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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/562,645

12/28/2005

Josef Kuhlmann

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8499

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EXAMINER

HAYES, KRISTEN C

ART UNIT

PAPER NUMBER

3643

NOTIFICATION DATE

DELIVERY MODE

02/12/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/562,645	Applicant(s) KUEHLMANN, JOSEF	
	Examiner Kristen C. Hayes	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20071228</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restrictions

1. Claims 25-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on 21 November 2007.

Information Disclosure Statement

2. The information disclosure statement filed 28 December 2007 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because it does not include foreign translations of the documents DE 19514574 and DE 3528604. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 16-19 rejected under 35 U.S.C. 103(a) as being unpatentable over Schmid US 3,119,373 in view of Mobley US 5,558,234.

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5. Regarding claim 16, Schmid discloses a manure conveyor device (Schmid, Figure 1) which a first return roller (8) about which a manure conveyor belt (5) circulates and a second return roller (9) about which the manure conveyor belt circulates. Driving the first return roller at a first rotational speed and the second return roller at a second rotational speed at different speeds and varying which of these rollers is the faster of the two is not disclosed. Mobley teaches driving a first return roller at a first rotational speed and a second return roller at a second rotational speed (Mobley, abstract: lines 5-8). Mobley does not disclose the first rotational speed exceeding the second rotational speed at an interval and the second rotational speed exceeding the first rotational speed at an interval. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Schmid with the rollers of Mobley so that the first and second return roller rotated at different speeds to change the intervals of rotation so that the first rotational speed exceeded the second rotational speed and vice versa depending on the desired progression of the materials (Mobley, column 3: lines 13-23). Given the structure, the method is inherently performed.

6. Regarding claim 17, Schmid as modified by Mobley further discloses the first and second return roller being driven in a same direction (Schmid, column 2: lines 45-47). Given the structure, the method is inherently performed.

7. Regarding claim 18, Schmid as modified by Mobley further discloses driving the manure conveyor belt in a circulating manner underneath a manure-permeable floor (1). Given the structure, the method is inherently performed.

8. Regarding claim 19, Schmid as modified by Mobley further discloses the device being structured and arranged for use with livestock breeding operations (in that the device of Schmid is capable of doing so). Given the structure, the method is inherently performed.

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9. Regarding claims 21 and 22, Schmid as modified by Mobley discloses a device with the limitations of claim 16 but does not disclose stopping the first and second return roller.

However, the roller of Schmid would eventually be stopped after a first interval of time (whether it be for maintenance, cleaning, etc) before they were started for a second period of time.

Regarding the limitation of the period of time being one to four minutes, it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. The time the rollers were stopped would depend on the attention the device needed. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the rollers of Schmid as modified by Mobley to stop for a period of time between the first interval and the second interval, as discussed above. Given the structure, the method is inherently performed.

10. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schmid in view of Mobley as applied to claims 16-19, 21 and 22 above, and further in view of Eckert et al. US 2006/0260911.

11. Regarding claim 20, Schmid in view of Mobley discloses a device with the limitations of claim 20 but do not disclose controlling the first and second rotational speed by frequency controllers. Eckert teaches controlling rotational speeds of roller by frequency controllers (Eckert, ¶0053). It would have been obvious to one of ordinary skill in the art to modify the device of Schmid as modified by Mobley with the known technique of the frequency controllers of Eckert to provide the predictable results of controlling the rotational speeds of the rollers. Given the structure, the method is inherently performed.

12. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmid in view of Mobley as applied to claims 16-19, 21 and 22 above, and further in view of Frankl US 3,982,499 and Cathers US 4,111,412.

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13. Regarding claims 22 and 24, Schmid in view of Mobley discloses a device with the limitations of claim 16 but do not disclose the rotational speed of the intervals of the diameter of the return rollers. Frankl teaches a rotational speed of approximately 1 or 1.5 rpm (Frankly, column 7: lines 21-22). Cathers teaches the diameter of the rollers being approximately 90 to 110 mm (Cathers, column 6: lines 14-34). The examiner notes that it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. The speed at which an object is conveyed is related to the speed and diameter of the rollers. Changing these parameters would provide the predictable results of changing the conveying speed. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Schmid in view of Mobley with the rotational speeds and diameters of the rollers of Frankl and Cathers, as discussed above. Given the structure, the method is inherently performed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen C. Hayes whose telephone number is 571-270-3093. The examiner can normally be reached on Monday-Thursday, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571)272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCH
1 February 2008

Peter Poon
Examiner
Art Unit 3643

/Peter M. Poon/
Supervisory Patent Examiner, Art Unit 3643